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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re T.S., a Person Coming Under the  
Juvenile Court Law.

MARIN COUNTY DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

T.S.,

Defendant and Appellant.

A133038

(Marin County  
Super. Ct. No. JV25338)

T.S. was determined to be a dependent child and was removed from the care of both parents. Only the child’s father (Father) appeals, contesting both the jurisdictional findings and the order removing T.S. from his care. Since jurisdiction is supported by uncontested findings of the court as to the child’s mother, Father’s challenge to dependency jurisdiction necessarily fails. We conclude the removal order as to Father is supported by substantial evidence and affirm.

**I. BACKGROUND**

Even though Father is the only appellant, the history of T.S.’s mother (Mother) is relevant to the jurisdictional findings, and the dysfunctional relationship between the parents which, as we discuss *post*, is significant to the court’s disposition.

Mother has eight children, including T.S., and has a lengthy history with child protective services involving all of the children. When Mother’s first-born child was a

year old, Mother went on a “coke binge” and abandoned the child for 11 days. The father of this and Mother’s second child was mentally abusive and physically threatening. Mother’s third child (born in South Carolina to a different father) tested positive for drugs at birth. Mother left the child in the care of his father and great aunt and moved back to California. In California, Mother had another child with the first father. She entered drug treatment but relapsed, and over the next few years was arrested or convicted six times for drug possession, shoplifting, loitering to engage in drug activity, and prostitution. Mother’s fifth child tested positive for cocaine at birth and was taken into protective custody as medically fragile. Mother did not participate in reunification services, her parental rights to this child were terminated, and she served six months in jail for criminal child neglect related to the pregnancy.

Mother had two daughters (her sixth and seventh children) in 2007 and 2008. She again participated in drug treatment, but relapsed in 2009 and let drug users into her home, which by then included five children. After her 10-year-old son drew a knife on one of the visitors, Mother’s relatives took custody of the three older children and Mother kept the two young girls. In May 2009, Mother went on a drug binge and left the two young girls home without appropriate supervision. The girls were declared dependents and removed from her care. They were returned in October 2009, detained again in November 2009 after Mother left drug treatment, and were returned in December 2009. In 2010, Mother entered another drug treatment program but left after an arrest and subsequently relapsed.

#### *Incidents Involving T.S. and her Parents*

T.S. was born in July 2010. Father is T.S.’s presumed father. He was present when T.S. was born and remained involved in her life.

In December 2010, the Marin County Department of Health and Human Services (Agency) received two reports that Mother had relapsed into substance abuse. On December 31, police responded to an incident between Mother and Father (Parents) in a motel room with T.S. and three other children present. According to the police report, Mother said Father spit on her, called her a bitch, and then shoved her, causing her to lose

balance and knock over a fan. Father claimed that Mother attempted to block his exit from the motel room and motioned as if she was going strike him with her comb or the fan. A witness told police she could hear yelling and banging in the room. When the witness went to help Mother with the children, she saw Parents yelling and hitting each other. She perceived Father as the aggressor and suspected he was using drugs. The police identified Father as the primary aggressor in the incident.

On January 16, 2011, at about 2:00 a.m., police responded to an incident involving Parents at Homeward Bound housing, again with T.S. and other children present. According to the police report, Father said he came earlier to drop off T.S., and Mother drove off in his car. Father summoned the police. He asked that child protective services take custody of the children because he wanted to leave.<sup>1</sup> A police officer called Mother, who said she was on her way back home. She soon arrived and the police departed. Later that morning, at about 7:00 a.m., Mother called police to report that Father was trying to get into her residence. When police arrived, Father was not in the vicinity. Father contacted the police and denied that he had gone to Mother's home that morning. He said she called him all night and threatened to accuse him of abuse if he did not go to her home.

*Mother's Disappearance in February 2011 and Placement with Paternal Grandmother*

On Friday, February 11, 2011, Mother left her three children with a babysitter and disappeared for a week without making provisions for the children's care. Mother sent Father's mother (paternal grandmother) the following text message: "If anything happens to me, will you look after my babies for me?" The referral report states, "There is a belief that [Mother] may be feeling disheartened enough to hurt herself." Father left a message with the Agency the same weekend asking for help in locating Mother.<sup>2</sup> On Monday, February 14, Mother contacted the social worker and explained

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<sup>1</sup> At the detention hearing, Father denied calling the police or telling them that he told the police he could not care for the children.

<sup>2</sup> Father left the following voicemail message: "This is [Father], [Mother's] [ex]-fiancé calling. I was wondering if you have talked to her and if she told you when she

that after she and Father left the children with a babysitter on Friday night they got into an argument. Mother became upset and drove off with Father's car. She told the Agency "she was angry and was not thinking straight. [She] . . . felt she had made appropriate plans for the supervision of her daughters and that [Father] had made a 'bunch of drama.' . . . She agreed to call the [social worker] back with a plan for where she and the girls would be staying. [¶] [She] did not call . . . back, and . . . did not communicate with the [social worker] again, until 2/22/11." Mother later told the social worker that during the week she was away "she had become confused in San Francisco and had no memory of at least three of the days she spent there. . . . [She] denied using drugs and said that she had a mental health break." Mother expressed frustration that it would be more difficult to find housing now that her children were not in her care.

T.S. was placed in the care of her paternal grandmother with the consent of both Parents and no petition was filed on her behalf. (The two older girls were detained, a supplemental petition was filed on their behalf, and they were removed from Mother's care.) An informal and voluntary safety plan, not reduced to writing and not in the form of a voluntary family maintenance plan, was adopted. Under the plan, T.S. would reside with the paternal grandmother and Mother would have only supervised visits. Mother's visits were generally supervised by her mother (maternal grandmother). Regarding visits with Father, who stayed with the paternal grandmother three to four nights a week, the social worker testified, "I think what I discussed with [the paternal grandmother] is that she should always know where [T.S.] was. But it wasn't really sort of something that I felt like I had the power to tell her what to do."

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would be coming back for the kids and when she would bring my car back. She abandoned the kids this weekend and stole my car and went off on a drug run and hasn't been heard from, except for a few texts. She hasn't brought the kids' clothes or food and she doesn't seem to care about their whereabouts or their health. I was hoping that you could reach her and have her come back to reality and to her responsibilities as a mother. Thank you."

### *March 2011 Incidents*

On March 8, 2011, police responded to an incident between Parents in a motel room (this time without children present). According to the police report, a motel employee heard Parents arguing in a motel room and saw Mother hit Father on his arm. Father said Mother had hit him three times in the chest. Mother initially denied hitting Father, but then admitted pushing him. She was arrested for battery on a cohabitant. (Pen. Code, § 243, subd. (e)(1).) Although she had previously denied being hit by Father, after her arrest Mother claimed that Father hit her and held her hostage.

On March 17, 2011, police observed Mother appearing “to loiter for the purpose of prostitution.” Following a search, they found a “three inch glass meth pipe” with burn marks and residue in her possession. She was arrested for possession of drug paraphernalia (Health & Saf. Code, § 11364), cited and released.

On March 23, 2011, Father told the Agency there was no need for a family maintenance services plan and said that T.S.’s dependency case should be closed. He supported the paternal grandmother becoming T.S.’s guardian. Mother, however, was hesitant to agree to the guardianship for fear she would never regain custody of T.S.

On March 25, 2011, the paternal grandmother told the Agency that Mother was not engaging in services and she sometimes slept on the streets. Parents had been caught trying to sleep in the laundry room of the maternal grandmother’s apartment building. Parents did not provide the paternal grandmother any assistance in caring for T.S., and Mother did not even pick up her WIC vouchers to help her buy baby food. Moreover, Mother insisted she had the legal right to take T.S. from the paternal grandmother’s home at will.

On Saturday, March 26, 2011, Father took care of T.S. in the paternal grandmother’s home while the grandmother went out. Father later argued with his mother, apparently over her failure to return promptly. The paternal grandmother agreed to let Father take T.S. to the maternal grandmother’s home for a visit with Mother. Father called the maternal grandmother’s home and made arrangements for the visit, but when he realized he could not also spend the night at the maternal grandmother’s house,

he changed his plans and made arrangements to stay overnight with T.S. at the home of the mother of one of his other daughters. According to Father, Mother became upset when she learned of his change in plans and Father responded by agreeing to let her visit with T.S. in a café while he waited for a ride. Mother went to the café (apparently with the maternal grandmother), took T.S. from Father, and refused to return her. She reportedly shouted in the street at Father during this incident. Father called the police and Mother returned the child. The police then called the paternal grandmother to arrange T.S.'s return to her care. Father agreed to take T.S. to the paternal grandmother's home, but he did not do so. Instead, Father took T.S. to his friend's house, where they spent the night. The paternal grandmother informed the Agency that Father had not returned the child, but the Agency felt it had no legal ability to intervene.

The next day, Sunday, March 27, 2011, Father called Mother to set up another visit with T.S. Father dropped T.S. off with Mother and the maternal grandmother. However, Mother ended up spending that night alone with T.S. in a motel room. At about 6:00 p.m., Father left a message with the Agency reporting that Mother had not returned T.S. and asking that T.S. be returned to him and his mother rather than detained. However, the maternal grandmother told the Agency that Father said he wanted Mother to have the baby "so that she would have an easier time getting into a shelter," and that Father initiated the plan for T.S. to stay with Mother.

On Monday, March 28, 2011, the paternal grandmother reported that T.S. still had not been returned, even though she was scheduled for a doctor appointment that day. T.S. missed the appointment because "there was a period of time when nobody knew where the baby was." Ultimately, T.S. was returned to the paternal grandmother's care.

#### *Petition*

On March 29, 2011, the Agency filed a juvenile dependency petition on behalf of T.S. pursuant to Welfare and Institutions Code section 300, subdivisions (b) and (j).<sup>3</sup>

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<sup>3</sup> Unless otherwise noted, all further statutory references are to the Welfare and Institutions Code.

Three of the petition's allegations were based on Mother's conduct. Pursuant to section 300, subdivision (b) (failure or inability to protect or supervise), the petition cited Mother's "erratic and unpredictable behaviors which required police interventions" on March 8, 17 and 26, her disappearance during the week of February 11, and her substance abuse problem. Pursuant to section 300, subdivision (j) (abuse or neglect of a sibling), the petition alleged that three of T.S.'s half-siblings (all of whom were Mother's and not Father's children) had been abused.

The petition also included an allegation based on Father's conduct. Pursuant to section 300, subdivision (b), the petition alleged that T.S. was at substantial risk of harm because Father could not adequately supervise or protect her: "On or about 2/17/11, [Father] agree[d] to a safety plan where he would not allow the mother . . . to have unsupervised time with [T.S.] and that he would allow the paternal grandmother . . . to care for the child. On or about 3/27/11, [Father] did not comply with the safety plan and allowed [T.S.] to have unsupervised contact with the mother . . . . Additionally, on or about 3/23/11, [Father] declined a voluntary Family Maintenance case plan."

#### *Detention*

In its detention report, the Agency wrote that when Father left T.S. in Mother's care overnight on March 27, 2011, he "was aware of [Mother's] recent disappearance, continued drug use, and violent and erratic behaviors. In fact, [Mother] was arrested and booked . . . for battery against [Father] on or about 3/8/11." Moreover, "[n]either parent currently has a stable residence . . . . [The paternal grandmother] reports that her son stays with her but will disappear for days at a time when he 'goes off with [Mother].' [Mother] was reportedly discovered by her mother . . . to be staying in a tent behind the San Rafael Toys-R-Us, 'high as a kite.' [¶] . . . [Mother] and her children lost opportunities for permanent housing during their stay at Homeward Bound, due to repeated fights between [the Parents], as reported . . . by Homeward Bound Program Director, Emily Mann." The paternal grandmother wanted to continue to care for T.S., "but has indicated . . . that it is too hard for her to keep the baby safe with the parents being uncooperative and continuing to 'play games' and place [T.S.] in the middle of

their disputes.” In sum, the parents “are unable to put their child’s wellbeing first, by keeping her protected from their dysfunctional relationship. [T.S.] is a vulnerable eight-month old child who is entirely dependent on her caregivers to keep her safe. She requi[r]es parents [who] are alert, sober, and protective. Not only is [T.S.] at risk of physical harm, her emotional health is at risk, given her exposure to repeated Domestic Violence between her parents.”

Father contested detention. At a March 30, 2011 hearing, the parties and counsel discussed the situation with the court, without formal testimony. The court ordered T.S. temporarily detained *in foster care* and scheduled an evidentiary hearing in two days, on April 1. When the court made this order, Father stated: “Why are you taking my baby, man? The child is safe with my mom . . . . The child is in no harm or danger.”

At the renewed hearing on April 1, 2011, Father testified that on March 27 he gave T.S. to both Mother and the maternal grandmother and understood that the grandmother would supervise the visit. He later learned that Mother was spending the night alone with T.S. in a motel room when Mother called him and asked him to come by, which he did. “[W]hen I got there, I didn’t feel right taking the baby out of there and having a big commotion and everything. But I called my mom and I let my mom know . . . where she was with the baby. I called [the social worker] several times on her cell phone and on her office phone. And I even called the emergency line.” The social worker acknowledged that it would not have been a violation of the safety plan if Father gave T.S. to both Mother and the maternal grandmother on March 27. However, “[m]y understanding is that [Father] had implied to [the maternal grandmother] and [Mother] that [Mother] could take the baby and go into a program or a shelter.” Also, Father told her that he did not think it would be a problem to let T.S. stay with Mother for the rest of that night.

Citing the numerous incidents of domestic violence documented in police reports, the social worker testified that T.S. was being exposed to turmoil and “it just seems like a lot of decisions are made by the parents . . . based on their anger and how they are feeling in a given moment. [¶] And I believe that for [T.S.], she’s at risk when she’s around that or involved in that in any way.” She said the domestic violence “shows that the parent

has no ability to control those angry impulses,” thus putting T.S. at risk. She was concerned about whether the paternal grandmother could “control the situation so that [T.S.] is not continually put in the middle of a power struggle or a domestic fight.”

Father acknowledged that when T.S. was detained in February 2011, he did not believe T.S. would be at risk if she was returned to Mother’s care. However, “[b]ased on the incidents that happened a week or so ago, now I see she may need supervised visits for a while.” Father said he thought Mother’s visits should continue to be supervised and that the maternal grandmother was not a reliable supervisor. When asked if he could care for T.S., he responded, “[T]o help my mom, yes, I can take care of the baby.” When asked if he could care for T.S. without his mother’s help, he responded, “My only obstacle would be housing and childcare because I would be working full time right now” and had no residence other than his mother’s home. He was “pretty sure” he could stay with T.S. at one of his sisters’ homes on the nights he could not stay with his mother. Father testified that he had not used drugs since December 31, 2010.

The court detained T.S. “You know . . . , ‘It takes a village,’ . . . but somebody has to be in charge of the village. And nobody seems to be in charge of this village. [¶] . . . [¶] . . . It seems to me that everyone loves this child but that there is no plan between these parents on how to safely care for her. And she tends to get shuffled between grandparents, a mother who has a long history of substance abuse, and a dad who has, unfortunately, some homeless issues and inability to control this mother. [¶] . . . [¶] . . . It appears to me that [T.S.] really did live, as the social worker said, a life of turmoil, depending on which parent wanted to have her, and that . . . they could not come to an agreement how to safely maintain her in a stable environment, which posed the risk to her physical or emotional well being. [¶] And there was also evidence of verbal domestic altercation with the child present.”

While the court was making its order, Father was disruptive. Mother’s counsel stated, “I’m going to ask that [Father] not start making derogatory comments to [Mother] while you are reading the petition [*sic*].” Father retorted, “I’m going to ask that he go to AA.” Counsel continued, “I don’t think it’s appropriate for him to be sitting [near us]

yelling at [Mother].” As the court continued to make its order, Father said, “You can keep the baby,” and left the court.

### *Jurisdiction*

The Agency’s jurisdiction report stated that both grandmothers characterized the Parents as irresponsible and uncooperative, making it difficult for them to protect T.S. The paternal grandmother said, “ ‘It is so hard for me to keep the baby safe with them doing these things. They will not cooperate.’ ” The maternal grandmother said she was “a little frightened by [Father] and his lack of boundaries and she [was] considering a restraining order for herself. [Mother] has a friend who won’t let her stay with her anymore because [Father] repeatedly called her there and her friend did not want anything to do with it.” Regarding the March 27, 2011 incident in the café, the maternal grandmother reported that Father invited Mother to meet him and “as soon as she had the baby with her, he called the police.” She claimed Father set Mother up because “ ‘he likes to play games with her.’ ”

Father had an extensive criminal history, including charges between 1996 and July 2010 for grand theft, assault with a deadly weapon, use of false identification, violation of a domestic violence restraining order, petty theft, burglary, false imprisonment, vehicle theft, possession of controlled substances, and 17 alleged parole violations. He served time in the California Youth Authority and frequent stints in jail. The social worker described Father as follows: “When speaking with [Father] one-on-one, he seems like a calm and reasonable individual. He does, however, demonstrate a pattern of anger management issues reflective in his criminal history and his relationship history, and demonstrated through his actions at the Detention Hearing on 4/1/11, when he became angry and walked out of the courtroom. The Undersigned believes that it was [Father’s] anger at his mother on the evening of 3/26/11 . . . which caused him to make the impulsive decision to take [T.S.] with him to sleep at a friend’s house, rather than returning her to the home of [his mother]. Furthermore, [Father] arranged to bring [T.S.] back to [Mother] on 3/27/11, knowing that [the paternal grandmother] was worried and wanted [T.S.] returned to her home. [Father] needs to be able to act out of a responsible

desire to keep his daughter safe, rather than making impulsive anger-based decisions that put her at risk of harm.”

The Agency had concerns about T.S.’s development. The jurisdiction report stated that T.S. “appears to be comfortable in the arms of any adult, and has not yet developed a strong attachment to any particular caregiver. [She] seems to have some developmental delays, specifically with regards to her large motor development, . . . [and she] has been referred to Golden Gate Regional Center for an assessment . . . .”

At a May 2011 jurisdiction hearing, counsel for all of the parties tentatively agreed to submit on an amended petition, but Father would not consent. A contested hearing on the original petition was scheduled for July 6, 2011.

In the meantime, another domestic violence incident occurred between Parents. According to a police report, on June 5, 2011, independent witnesses called the police to report that Mother was hitting Father repeatedly about the upper torso with her fists. Mother was arrested for battery and for violation of a domestic violence order. The children were not present.

Also in the meantime, T.S. suffered a broken leg in foster care and the foster family could not provide an adequate explanation. She was removed from her foster home and placed again with the paternal grandmother. By this time, T.S. was medically fragile because of the decreased use of her limbs, her motor development was significantly delayed, she was being tested for thyroid problems, and physical therapy was planned. Also, she was still comfortable in arms of several caregivers and did not appear to have a primary caregiver attachment.

At the July 6, 2011 jurisdiction hearing, the social worker testified that the informal safety plan for T.S. had failed because “there were really no legal oversights to protect [T.S.] in the care of [the paternal grandmother], so the parents could sort of use her . . . as sort of a pawn in their arguments. . . . [A] lot of their fights seemed to be around . . . how [T.S.] would get to visit mom when, with who. [¶] . . . [¶] . . . [The paternal grandmother] called me and said she felt like she was to the point where, without more oversight, without the Court’s involvement, she didn’t feel that she could be

protective.” Regarding the domestic violence incidents, the social worker said, “I would think that given their relationship . . . they would stay away from each other, but as soon as [Mother] was released from jail the last time, it was just a matter of days before they were fighting again and she was detained again.”

Father’s counsel argued that the safety plan was really an agreement between the Agency and the paternal grandmother, not Father. The social worker was not sure whether she ever spoke directly to Father about the safety plan. When asked by the court if, regardless of the safety plan, Father endangered T.S. by leaving her with Mother who had a known substance abuse problem, counsel responded that the maternal grandmother was present when Father delivered T.S. to Mother on March 27, 2011. When Father later discovered Mother alone with T.S., his options were to “call someone in authority to let them know or to snatch the baby away from [Mother] himself, which he was reluctant to do, obviously, because of the history of aggression from [Mother]. So he called and left messages for the social worker[,] appropriately[] according to the social worker . . . .”

While the Agency’s counsel was presenting argument, Father was again disruptive, interjecting, “She’s lying.” While the court was making its order, Father interjected, “But she’s wrong, though. [¶] . . . [¶] I’m not going to be quiet, man. Not going to tell me something I didn’t do. [¶] . . . [¶] She’s a liar. You lying.”

The court sustained the petition on the basis of the section 300, subdivision (b) allegations, including the allegation based on Father’s conduct.

### *Disposition*

In its July 2011 disposition report, the Agency recommended removing T.S. from both Parents and offering reunification services. Although Father said he could care for T.S. with the assistance of his mother, the social worker wrote, “[H]e has never obtained his own housing and he is not sure where or how to start looking. Housing seems to be an overwhelming obstacle to him, and he said he would accept any assistance available to find housing. At present, he is reported to be staying with friends.” Father admitted using drugs with Mother in the past, but claimed he had been clean and sober for two months. He had twice participated in inpatient drug treatment without success. He

refused to participate in inpatient treatment now because he did not want to lose his job in construction. He accepted a referral for drug testing, but had not followed through six weeks later. The social worker also wrote that Father had an anger management problem. In addition to the domestic violence incidents with Mother, the social worker noted Father's outbursts in the courtroom and reported that "[f]ollowing the Jurisdiction hearing, [Father] left the [social worker] a hostile voicemail message which included foul language." Father followed through on a referral for anger management counseling.

At the July 18, 2011 disposition hearing, Father submitted on the report. The court found there was clear and convincing evidence of section 361, subdivision (c) circumstances, removed T.S. from both Parents' care, and ordered reunification services for both Parents.

## II. DISCUSSION

### A. *Jurisdiction*

Father contests the court's jurisdictional finding based on his conduct. He does not contest the jurisdictional findings based on Mother's conduct, and he acknowledges that jurisdiction over a child is established if the conduct of *either* parent places the child at risk under the criteria of section 300. Father's challenge to the finding based on his conduct is therefore moot (i.e., a reversal of the finding cannot lead to a reversal of jurisdiction). He argues we should nonetheless reach the issue because the finding might have had an effect on the disposition order with respect to Father and might affect subsequent proceedings.

These arguments are directly answered by a recent decision by Division One of this district, *In re I.A.* (2011) 201 Cal.App.4th 1484. In that case the jurisdictional allegations included mother's drug abuse, domestic violence between the parents, and the parents' criminal histories. (*Id.* at p. 1488.) The father there also challenged the jurisdictional findings based on his conduct, but not the findings based on the mother's conduct. The court dismissed the appeal as moot because the father's "contentions, even if accepted, would not justify a reversal of the court's jurisdiction." (*Id.* at pp. 1487–1488.) "[I]t is necessary only for the court to find that one parent's conduct has created

circumstances triggering section 300 for the court to assert jurisdiction over the child. [Citations.] Once the child is found to be endangered in the manner described by one of the subdivisions of section 300—e.g., a risk of serious physical harm (subds. (a) & (b)), serious emotional damage (subd. (c)), sexual or other abuse (subds. (d) & (e)), or abandonment (subd. (g)), among others—the child comes within the court’s jurisdiction, even if the child was not in the physical custody of one or both parents at the time the jurisdictional events occurred. [Citation.] For jurisdictional purposes, it is irrelevant which parent created those circumstances.” (*Id.* at pp. 1491–1492.)

Regarding the claim of collateral consequences from the jurisdictional finding, our colleagues noted that the father there did not “identify any specific potential impact, and we can find none on our own.” (*In re I.A.*, *supra*, 201 Cal.App.4th at pp. 1493–1494, fn. omitted.) The court considered whether the jurisdictional finding might lead to a bypass of services for the father in a future dependency action and concluded it would not: “while misconduct can result in a denial of reunification services, any finding must be by clear and convincing evidence. (§ 361.5, subd. (b).) Because a jurisdictional finding need only be made by a preponderance of the evidence, it cannot support a denial of reunification services under section 361.5. [Citation.]” (*In re I.A.*, at p. 1494.) The court also considered whether the finding precluded the child’s placement with the father as the nonoffending parent under section 361, subdivision (c)(1) or section 361.2, subdivision (a). (*In re I.A.*, at p. 1494.) The court found no possible collateral consequence because the father was ineligible for placement under those statutes as he was not living with the child at the time the petition was filed (see § 361, subd. (c)(1)) and he was not a presumed father (see § 361.2, subd. (a)). (*In re I.A.*, at p. 1494.)

Here too, we find no collateral consequence of the jurisdictional finding as to Father that would justify our review of that finding. Unlike the father in *In re I.A.*, *supra*, 201 Cal.App.4th 1484, Father arguably is eligible for placement under section 361, subdivision (c)(1) as a parent who was living with T.S. (in the paternal grandmother’s home) at the time the petition was filed and under section 361.2, subdivision (a) as a presumed father. However, as with a bypass of services, a decision *not* to place T.S. with

Father under these sections requires proof by clear and convincing evidence. (See *In re Isayah C.* (2004) 118 Cal.App.4th 684, 693–694.) Thus, the jurisdictional finding by itself (which only had to be proven by a preponderance of evidence) could not support a denial of placement under these statutes. (*In re I.A.*, at pp. 1493–1494.) Like the father in *In re I.A.*, Father has not shown that the jurisdictional finding based on his conduct prejudiced him in any tangible way.

*In re I.A.* also rejects the argument that the jurisdictional finding “might have some consequence in a future dependency or family law proceeding.” (*In re I.A.*, *supra*, 201 Cal.App.4th at pp. 1494–1495.) Again, the father “fail[ed] to suggest any way in which this finding actually could affect a future dependency or family law proceeding, and we fail to find one on our own. In any future dependency proceeding, a finding of jurisdiction must be based on current conditions. [Citation.] . . . Other relevant dependency findings similarly would require evidence of present detriment, based on the then prevailing circumstances of parent and child. The prospect of an impact on a family law proceeding is even more speculative.” (*Ibid.*) We find the same analysis applicable here.

Father’s cited cases are unpersuasive or distinguishable. In *In re John S.* (2001) 88 Cal.App.4th 1140, 1143 (*John S.*), the court reviewed a jurisdictional finding (despite the fact that other uncontested findings established jurisdiction) because “there could be an impact on both placement and reunification orders.” However, the court failed to identify what that impact might be. We follow *In re I.A.*, *supra*, 201 Cal.App.4th 1484 and decline to review a jurisdictional finding where the appellant has not identified and we have not found any potential impact on jurisdiction or other dependency orders. (See *In re I.A.*, at p. 1494, fn. 7 [noting *John S.* failed to identify subsequent impact of jurisdictional finding].) Father also cites a case in which the court reviewed a jurisdictional finding because “if erroneous, [it] could have severe and unfair consequences to Father in future family law or dependency proceedings.” (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 716 & fn. 4 (*Daisy H.*)) *Daisy H.* in turn cites *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1547–1548 (*Joshua C.*), which reviewed

jurisdictional findings even though the dependency case had already been terminated. When the juvenile court terminated the dependency case in *Joshua C.*, it issued continuing custody and visitation orders enforceable in family court. (*Ibid.*) The appellate court concluded the jurisdictional findings were reviewable because they were basis for the custody and visitation orders and the appellant would be collaterally estopped from relitigating the jurisdictional issues in family court. (*Id.* at p. 1548.) That is, in *Joshua C.*, the collateral consequences of the jurisdiction findings were concrete and current, thus justifying review of the jurisdiction finding. In *Daisy H.* and here, any collateral consequences are purely speculative. Again, we follow *In re I.A.* and decline to review a jurisdictional finding under these circumstances.

B. *Disposition Order*

Father argues the order removing T.S. from his custody was not supported by substantial evidence.

“A dependent child may not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence of . . . [¶] . . . [t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s or guardian’s physical custody.”<sup>4</sup> (§ 361, subd. (c)(1).) Similarly, a parent “with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child,” may be denied placement of the child only if the court finds the placement “would be detrimental to the safety, protection, or physical

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<sup>4</sup> “The court shall consider, as a reasonable means to protect the minor, the option of removing an offending parent or guardian from the home. The court shall also consider, as a reasonable means to protect the minor, allowing a nonoffending parent or guardian to retain physical custody as long as that parent or guardian presents a plan acceptable to the court demonstrating that he or she will be able to protect the child from future harm.” (§ 361, subd. (c)(1).)

or emotional well-being of the child.” (§ 361.2, subd. (a).) This finding also must be made by clear and convincing evidence.<sup>5</sup> (*In re Isayah C.*, *supra*, 118 Cal.App.4th at p. 694.)

“In juvenile cases, as in other areas of the law, the power of an appellate court asked to assess the sufficiency of the evidence begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact. All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the verdict, if possible. Where there is more than one inference which can reasonably be deduced from the facts, the appellate court is without power to substitute its deductions for those of the trier of fact. [Citation.]” (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547.) We take note “ ‘that in dependency proceedings the burden of proof is substantially greater at the dispositional phase than it is at the jurisdictional phase if the minor is to be removed from his or her home. [Citations.] [¶] This heightened burden of proof is appropriate in light of the constitutionally protected rights of parents to the care, custody and management of the children. [Citation.]’ . . . [¶] We review the record in the light most favorable to the trial court’s order to determine whether there is substantial evidence from which a reasonable trier of fact could make the necessary findings *based on the clear and convincing evidence standard*. [Citation.]” (*In re Isayah C.*, *supra*, 118 Cal.App.4th at p. 694.)<sup>6</sup>

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<sup>5</sup> Because the same standard applies to placement with an allegedly nonoffending parent regardless of whether that parent was living with the dependent child at the time of jurisdiction, we need not decide whether Father was custodial within the meaning of these statutes under the unusual facts of this case.

<sup>6</sup> There is a split of authority about whether the reviewing court should take the standard of proof into account when reviewing a finding under the substantial evidence standard. *In re Mark L.* held, “ ‘[O]n appeal from a judgment required to be based upon clear and convincing evidence, “the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent’s evidence, however slight, and disregarding the appellant’s evidence, however strong.” [Citation.] [Citation.]” (*In re Mark L.* (2001) 94 Cal.App.4th 573, 580–581.) Other

Substantial evidence supports the court’s implied finding that Father played an active role in subjecting T.S. to Mother’s erratic and often drug-fueled reckless behavior, to verbal and physical conflict between the Parents, and to unstable living conditions. Given T.S.’s young age and fragile physical condition, this conduct placed her at substantial risk of physical and emotional harm.

First, substantial evidence in the record supports a finding that Father affirmatively contributed to the repeated domestic conflicts T.S. was exposed to, and he was not a mere victim or innocent bystander. The December 31, 2010 police report identified Father as the aggressor in that conflict based on the police officer’s observations and the report of an independent witness. The February 11, March 8, and March 26, 2011 incidents all began with verbal arguments. Given other evidence of Father’s anger management problems—including his hostile outbursts and ad hominem attacks in the courtroom, his argument with the paternal grandmother and petulant behavior on March 26–27, the maternal grandmother’s expressions of fear of Father and her reports that he manipulated and provoked conflicts with Mother—the court reasonably could infer that Father’s short temper directly contributed to the ongoing conflicts with Mother in T.S.’s presence, even if Mother was responsible for most of the physical violence. (See *In re Heather A.* (1996) 52 Cal.App.4th 183, 194 [inferring from father’s problems with anger and hostility that past domestic violence would continue].) The social worker’s testimony that Father admitted drug use with Mother as late as early 2011 also supports this inference. By engaging in ongoing conflict with Mother in T.S.’s presence, conflict that often led to physical violence or impulsive behavior like Mother’s taking T.S. from Father’s arms, Father placed T.S. at risk of physical harm as well as emotional stress and

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courts have taken the approach of *In re Isayah C, supra*, 118 Cal.App.4th at pp. 694–695.) (See *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654; *In re Henry V.* (2004) 119 Cal.App.4th 522, 529–530].) Because we affirm the court’s finding even under the heightened approach to substantial evidence review, the proper standard of review is not dispositive in this case.

anxiety. (See *id.* at pp. 189–190 [describing “secondary abuse” effects on children who witness domestic violence between parents].)

Even if Father did not instigate or fuel these conflicts, the court reasonably could have concluded that Father placed T.S. at risk of harm by failing to shield her from the conflicts. As the social worker said during the jurisdiction hearing, rather than avoid each other following their multiple conflicts, Parents reunited shortly after Mother was released from jail. Similarly, on March 27, 2011, just one day after police intervened when Mother took the baby and shouted at Father in the streets, Father called Mother to arrange another visit. Father resisted Agency intervention, and did not consistently cooperate with the paternal grandmother in ensuring stability and safety for the child. The court reasonably could infer from Father’s past pattern of behavior that he would continue to put T.S. at risk of harm.

In addition to the domestic strife, Father placed T.S. at risk by exposing her to Mother’s habitual substance abuse and associated erratic behavior. Mother admitted cocaine and methamphetamine use and she was caught with a methamphetamine pipe in March 2011. Father admittedly used drugs with Mother as recently as early 2011, and the court could reasonably infer that he was aware of Mother’s continuing drug use. Father knew that Mother had disappeared for a week in February without making provisions for her children’s care. The court reasonably could infer that Father also knew (at least once the Agency intervened on behalf of T.S.) about Mother’s long history of child dependency proceedings linked to her substance abuse. Father nevertheless regularly left T.S. in Mother’s care and resisted formal Agency intervention on T.S.’s behalf, insisting that T.S. was safe in Mother’s care. As late as March 27, Father continued to insist T.S. was safe alone with Mother, Not until the detention hearing did Father acknowledge the need for supervision of Mother’s visits. Although Father testified that he nevertheless complied with the supervision requirement, the court could reasonably have found that he did not. The maternal grandmother told the Agency that on March 27, 2011, Father encouraged Mother to take physical custody of T.S. as a way to help Mother get into a shelter. The court was free to credit the maternal grandmother’s

statement over Father's testimony that he thought Mother's visit would be supervised in the maternal grandmother's home.

Further, the court reasonably could have found that entrusting T.S. to Father's care would continue to expose T.S. to instability that threatened her healthy development. Neither Mother nor Father had a permanent residence. From her birth, T.S. had been regularly shuffled between homes and caregivers, and in both March and July the Agency reported that she was comfortable in the arms of any adult and had not yet developed a strong attachment to a primary caregiver. She also displayed developmental delays. When T.S. was placed with the paternal grandmother, which promised greater stability, Father interfered by removing her and taking her to or leaving her in two different locations in a single weekend without the paternal grandmother's consent. The paternal grandmother told the Agency she felt she could not provide a stable home for T.S. because of Father's interference. Because Father had no other permanent residence and sought custody of T.S. with his mother's assistance, the lack of cooperation between Father and his mother further demonstrated that Father could not provide T.S. with a safe, stable residence.

Finally, the court could reasonably conclude that Father presented direct risk of harm to T.S. Father admitted prior drug use with Mother, he had a long criminal history that included a drug offense, he had never successfully completed drug treatment, he rejected an Agency referral for residential drug treatment, and he failed to follow up on a referral for drug testing. The court could reasonably find that Father's apparently untreated substance abuse problem posed a risk to T.S., who as of July 2011, was a medically fragile child and was still less than a year old. (See *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824 [absence of adequate supervision and care poses inherent risk to a very young or disabled child].) This is especially so in light of his demonstrated anger management issues and the evidence that he was the aggressor in one of the domestic violence incidents.

In sum, Father's role in the Parents' domestic violence, his failure to appreciate the risks T.S. faced as a result of Parents' conflicts and Mother's substance abuse, his

failure to provide a stable residence for T.S., and his untreated substance abuse problems support the trial court's finding by clear and convincing evidence that T.S. faced a substantial risk of harm if placed in Father's care.

Father argues homelessness as a result of poverty cannot justify removal or a finding of detriment. “[P]overty alone, even abject poverty resulting in homelessness, is not a valid basis for assertion of juvenile court jurisdiction” or a finding of detriment. (*In re G.S.R.* (2008) 159 Cal.App.4th 1202, 1212, 1214–1215; see also *In re Z.K.* (2011) 201 Cal.App.4th 51, 68–69; *In re Frank R.* (2011) 192 Cal.App.4th 532, 539; *In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1401–1402; *In re P.C.* (2008) 165 Cal.App.4th 98, 105–106.) There are two problems with this argument. First, the record does not reflect that Father's homelessness resulted from poverty. Father had a job in construction and he claimed to be working full time as of the April 1, 2011 detention hearing. The court received evidence that Mother was unable to obtain housing for her and her children due to Parents' fighting, and the court reasonably could infer that the same issue interfered with Father's search for housing. Second, Father's homelessness was not the sole or even the primary basis for the court's detriment finding. Rather, as noted *ante*, the court reasonably could have found Father lacked insight into the danger Mother posed to T.S. and he actively contributed to placing T.S. in confrontive and violent situations that threatened her emotional well being and placed her at risk of physical harm.

Father argues there was insufficient evidence that he would not cooperate with the Agency if he obtained custody of T.S. He cites the evidence that he reported the March 26, 2011 incident (Mother's taking the baby from him in the café) to the police and the March 27 incident (Mother's having the baby alone with her in the motel room) to the Agency; his statement in April that he would do whatever was necessary to regain custody of T.S.; and his statements that he realized after March 27 that the maternal grandmother could not be trusted and thus would not entrust the baby to her and Mother again in the future. However, as already noted, there was also evidence that Father was prone to outbursts of anger, that he actively contributed to the confrontations between him and Mother, that he encouraged Mother to take T.S. on March 27 so she could get

into a shelter, and that he failed to cooperate with the paternal grandmother. The latter evidence supported the court's finding that Father would not provide T.S. a stable, protective residence if he was given custody of the child. Father cites *In re Henry V.* for the observation that out-of-home placement should not be used as a bargaining chip to secure parental cooperation with Agency goals in the absence of a showing of detriment by clear and convincing evidence. (See *In re Henry V.*, *supra*, 119 Cal.App.4th at pp. 528, 530.) Here, there was clear and convincing evidence of detriment, especially in light of T.S.'s young age and fragile condition.

Citing *In re Basilio T.* (1992) 4 Cal.App.4th 155 (*Basilio T.*), Father argues the evidence of domestic violence between Parents was insufficient to support the removal order. In *Basilio T.*, the sole basis for removal, which was found inadequate, was two incidents of domestic violence that did not result in physical harm to the children, who were four and six years old. (*Id.* at pp. 160, 171.) Here, there is a more extensive record of domestic conflict, T.S. was less than a year old and medically fragile, Mother had a long-standing substance abuse problem that placed T.S. at further risk of harm if Father allowed Mother unrestricted access to the child, and both Parents were homeless, introducing yet another element of instability and physical risk. *Basilio T.* is thus factually distinguishable.

Citing *In re Jasmine G.* (2000) 82 Cal.App.4th 282, Father argues his hostility toward the social worker during and following the jurisdiction hearing and alleged lack of cooperation with the Agency (i.e., his opposition to Agency intervention) are not proper bases for removing T.S. from his care. *In re Jasmine G.* is again distinguishable. The appellate court there chastised the agency for opposing reunification because the parents had conservative attitudes toward teenage behavior. (*Id.* at p. 290.) The agency's statements about the parents' hostility and lack of cooperation with the agency overlapped with this underlying disagreement about the parents' parenting techniques. The court concluded the parents' attitudes were irrelevant to the removal standard under section 361. (*Ibid.*) Here, the Agency's concerns about Father's hostility and lack of cooperation related to his larger anger management problem, which contributed to

repeated domestic violence in T.S.'s presence. He lacked appreciation for the risk T.S. faced when placed in Mother's care, causing him not to protect her from unsupervised contact with Mother. He lacked appreciation of the risk T.S. faced by living in turmoil with no stable residence, and as a result was not a reliable protector of T.S.'s welfare. In other words, the concerns related to the detriment T.S. faced if placed in Father's care, an issue directly relevant to the removal decision under section 361.

Father argues evidence that he had a substance abuse problem was weak and did not support the removal order. He cites cases in which there was evidence of drug use but little other evidence of detriment. (See *In re David M.* (2005) 134 Cal.App.4th 822, 826, 829–830 [the mother had history of marijuana use and tested positive when she gave birth, but child tested negative, older sibling was healthy and well cared for, and mother tested negative after child's birth]; *Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1326–1327 [mother occasionally drank and used marijuana, but incident that led to dependency was isolated one and no other evidence of detriment]; *In re W.O.* (1979) 88 Cal.App.3d 906, 907–910 [parents admitted past drug use and drugs were found in the home, but children were well cared for and there was no evidence drugs were accessible to the children].) While the evidence of Father's substance abuse here might not alone support removal of T.S. from Father's care, in combination with the other evidence discussed *ante* the evidence of Father's unresolved substance abuse problem is a factor in establishing detriment by clear and convincing evidence.

Father insists that there was an insufficient showing that there were no less drastic alternatives to removal available. He suggests the former arrangement with the paternal grandmother could have been continued with a more structured visitation schedule for Mother. However, the success of such an arrangement would depend first on the paternal grandmother's willingness to participate despite Father's recent lack of cooperation, and second on Father's reliability in keeping T.S. away from Mother. For the reasons already stated—Father's own statements, Father's performance under the prior arrangement, Father's emotional outbursts, and Father's unresolved substance abuse problems—the

court reasonably could conclude by clear and convincing evidence that such an arrangement would not have protected T.S. from a substantial risk of harm.

**III. DISPOSITION**

The jurisdiction and disposition orders are affirmed.

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Bruiniers, J.

We concur:

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Simons, Acting P. J.

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Needham, J.